

Book Review

Indus Basin Uninterrupted

Satish Chandra

*Indus Basin Uninterrupted: A History of Territory and
Politics from Alexander to Nehru*

By Uttam Kumar Sinha

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Indus Basin Uninterrupted is unquestionably a remarkable book. Remarkable because of the sheer grandeur of its sweep-- in just about 300 pages it covers the major happenings in the Indus Basin in the last 3500 years. Remarkable because in so doing it does not degenerate into turgidity but maintains a light touch and at all times is eminently readable. Remarkable also because it is based on a wealth of contemporary records giving it authenticity and bringing to life the developments under review.

The book is divided into the following five aptly titled sections:

1. Settlers, Invaders and Successions;
2. Diplomacy and Commerce on the Indus;
3. Colonisation, Canals and Contestation;
4. Partition of Land and Rivers;
5. Making of the Indus Waters Treaty.

Predictably, the book begins with the Indus Valley Civilisation which flourished between 3300-1500 BC. The Indus Basin, known for its productivity, is equally known

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for its unpredictability on account of the frequent changes in the course and flows of its rivers. This has led the locals to be resilient and adaptive. Thus, the decreasing rainfall and eastward river shift that occurred during this period were addressed by a variety of hydraulic interventions. This has been the case from time immemorial. The section attributes climate change-induced drought as the main reason for the demise of the Indus Valley Civilisation.

Punjab--Staging Point for Invasions

Section I makes the perceptive observation that the Punjab, often termed as the land of five or seven rivers, was the staging point of invaders into India. Accordingly, it profoundly shaped India's destiny and its location brought an interrelation between war and peace and an intersection of race, culture, and language. The Punjab was thus a melting pot giving rise to a composite culture that bore the imprint of every age and every race and culture with which it came into contact. It is no wonder that Punjabis are supreme pragmatists.

Section I also draws attention to the numerous invaders who came to India, notably Semiramis (811-806 BCE) the Assyrian Queen, and King Cyrus of Assyria (590-529 BCE), neither of whom could cross the Indus, and Alexander who was far more successful but could not proceed beyond the Beas and while retreating went downstream the Indus till what is called Hyderabad in Sindh today. It goes on to trace the advent of Islam into India through Mohammad Bin Qasim's conquest of Sindh in 711 AD, which led to its control by the Umayyad and later Abbasid Caliphates. This accounts for the very close political and commercial connection between Sindh and the Arab world. Indeed, in the horrific earthquake of 893 AD in Debal, present day Karachi, in which 150,000 persons lost their lives, the Caliphate provided much relief assistance. Sindh in the 9th century AD was a well irrigated and prosperous region with highly developed agriculture and commerce.

Some of the other notable invasions referred to at some length are those of Mahmud Ghazni, Genghis Khan, Nadir Shah, Ahmad Shah Abdali, Timur and Babur. However, invasions were not a one-sided enterprise from the west to the east. There were also some notable ones from the east to the west as for instance that of Chandragupta Maurya, who by defeating the Greek general Seleucus Nicator acquired Herat, Kabul, and Kandahar. Though not mentioned by the author, the Mughals conquered

Kabul and the British invaded Afghanistan repeatedly as detailed later in the book. Additionally, note may be taken of the fact, not brought out in the book, that though the Sikhs did not conquer Afghanistan proper they did extend their sway to Attock and Peshawar, which traditionally had been under Afghan control.

In this context, the author asserts that the Afghan-Sikh rivalry initiated the settling of a formalized border between India and Afghanistan by the British by way of the Durand Line in 1893. It is strictly speaking not correct to suggest that the Durand line is a formalized border. It has never been recognized as such by Afghanistan to date. The Durand Line was never intended to constitute an international border between Afghanistan and India but merely to mark the limits of the spheres of influence of Amir Abdur Rahman Khan and British India. Indeed, after signing the Agreement, Sir Henry Mortimer Durand, the Indian Foreign Secretary, had no hesitation in asserting that "The tribes on the Indian side are not to be considered as within British territory. They are simply under our influence in the technical sense of the term....." That the Durand Line merely marked spheres of influence, and not territorial limits, is further borne out by the fact that the British right till 1947 allowed the tribals under their sphere of influence to conduct their own affairs without hindrance and did not attempt to bring them under their administration, much less occupy the area.

Section I is peppered with telling quotes -- that often enthrall -- from contemporary sources like the Arthashastra, the Rajatarangini, the Baburnama, and travellers like Al Baladhuri, El Masudi, Alberuni, Ibn Battuta, Ibn Shahriyar, etc. Thus, Ibn Battuta found Delhi as "a most magnificent city" with a rain water reservoir outside it two miles long and one mile wide which was used for drinking water supply. He also noted that the waters of the Jumna were unfit for drinking as they were impregnated with natron. On a lighter note, it may be suggested that the same is true today! Similarly, El Masudi describes Multan with its numerous villages and estates as well cultivated and covered with trees and fields. Nearly all the rulers undertook flood management and a variety of differentiated irrigation works were undertaken. Thus, Lalitaditya introduced the water wheel for elevating water to higher levels and he also built a network of canals for utilizing the waters of the Jhelum. Canal construction reached a new level under the Tughlaks with the use of brick and mortar to line the water channels. Firoz Shah Tughlaq introduced new perennial canals and waterways. In 1355, he constructed the Western Yamuna Canal as well as canals taking the waters of the Sutlej and the Yamuna to

Hissar. These were further developed by the Mughals and at the end of Aurangzeb's rule Punjab had 4,000 Km of inundation canals irrigating about 0.4 million hectares.

Alongside actual water management, thought was also given to water development and sharing norms. The Arthasastra had stipulated that:

1. All water belonged to the ruler;
2. Irrigation should not harm others;
3. There should be no obstruction or diversion of water courses, nor any release from barrages without legitimate cause, and where there was damage compensation must be made.

Apart from irrigation, the Indus over time also started being used for transportation-- though not to the extent of the Ganges. By the late 16th century, navigation on the Indus Basin from Lahore to Thatta was well established. It is estimated that as many 40000 boats of all sizes were plying in and around Thatta.

Indus--Diplomacy and Commerce

Section II titled Diplomacy and Commerce on the Indus, is confined essentially to the first half of the 19th century and dwells on developments related to British apprehensions of the Russian advance into and control of Afghanistan, and indeed even of the French into Sindh. Accordingly, the trans-Indus region with its intrigues and fears of a foreign invasion became an imperial migraine for the British. It sought to address this through alliances with Afghanistan, Persia, the Sikhs in the Punjab, and through establishing influence in Sindh and Baluchistan. This process entailed much diplomatic effort spearheaded by people like Charles Metcalfe, John Stuart Elphinstone, and John Malcolm. This diplomatic outreach was accompanied by systematic and detailed surveys of the region, which were hitherto virtually terra incognita for the British not only by the aforesaid players but also by a host of other persona such as Lt. Henry Pottinger, James and Alexander Burnes. etc. While the British must be admired for their compilation of such extensive data, they did not often necessarily arrive at the right assessment and thus their decisions were sometimes flawed. In the instant case, for instance, British fears of Russian penetration into Afghanistan were vastly exaggerated and totally unrealistic and they never

understood that the Afghans were too independent minded to tolerate foreign dictation whether Russian or British.

Alexander Burnes, had, in fact, navigated the Indus from its mouth to Lahore mapping also the territories around it. It was on the basis of his reports that Lord Bentinck, the Governor General, decided to push for trade on the Indus and instructed Henry Pottinger to negotiate treaties with the Amirs of Sind to open navigation on the Indus. Pottinger himself had serious reservations in the matter as he was aware of the “hydrological difficulties” of navigating the Indus, as the region had little trade potential due to the prevailing poverty, and as the Amirs had no fondness for the “white man” and had a fanatical hatred for Christianity. Nevertheless, the requisite treaties had been concluded by 1839 and the British secured free and unrestricted navigation on the Indus, the right to occupy strategic points at the mouth of the Indus, inclusive of Karachi, and a pledge from the Amirs to act in subordination to the British. Following the disastrous first Afghan War the Amirs in 1842 in disregard of their treaties with the British resumed the levy of tolls on navigation on the Indus. The British reacted severely and an army under Charles Napier annexed Sindh in August 1842 in a brutal military action. This questionable action is amply testified to in the words of Napier himself who stated, “Our object in conquering India, the object of all our cruelties, was money.....we shall all suffer for the crime as sure as there is a God in heaven” . Punch carried a story in 1844 that Napier had sent a one word message to his superiors in London “Peccavi” Latin for “I have sinned” a perfect pun for “I have Sind”. Ironically, navigation on the Indus did not survive for too long. It was supplanted by roads and railways. This was largely the handiwork of Bartle Frere the Commissioner of Sind (1851-1859) who additionally also greatly expanded the irrigation network. By the time he left he had built 6,000 miles of road in Sind.

The British acting through Charles Metcalfe were able to reach a mutually beneficial arrangement with Ranjit Singh under the Treaty of Amritsar in 1809, under which the latter was allowed to remain supreme in the territories north of the Sutlej and undertook not to interfere in the cis Sutlej states like Patiala, Nabha, Jind, etc. The Treaty was strictly observed by both sides and the British resisted all efforts by Dost Mohammed to coerce Ranjit Singh into ceding Peshawar to him. Ranjit Singh, on his part, while formally joining the Army of the Indus in 1839 against Dost Mohammad did not in fact participate in the actual invasion of Afghanistan.

The book, perhaps, misses a trick in not dealing with the first Afghan war in greater detail. This exercise constituted a gargantuan failure on the part of the British. Not only was it driven by unrealistic fears about Russian intentions, but Dost Mohammad was not per se averse to an alliance with the British and was merely exploring options with the Russians. An agreement with the British was on the cards if the latter had merely agreed to pressurize Ranjit Singh to return Peshawar to Afghanistan. One must remember that Peshawar and indeed much of the territory West of the Indus was ethnically Pashtun and had from time to time been under Afghan control. Moreover, by the time the British entered Afghanistan the Persian siege of Herat encouraged by Dost Mohammed and the Russians had been lifted due to British action against Kharag island and the Russian diplomats had been withdrawn from Afghanistan. While initially the Army of the Indus was successful in defeating Dost Mohammad and installing Shah Shuja three years later due to the unpopularity of the latter and poor force management the Army of the Indus was driven out of Kabul and only a sole survivor was left to tell the tale of the terrible massacre it faced at the hands of the Afghans. Of course, the remainder of the British forces in Kandahar, Ghazni and Jalalabad were able to retake Kabul and in an act of retribution blew up the great bazaar. Nevertheless, they left Afghanistan and Dost Mohammad regained power.

Irrigation and Canals

Section III titled “Colonisation, Canals, and Contestation” provides a detailed overview of the remarkable irrigation activity undertaken in the Indus Basin from the mid 1850’s to 1947, the results it achieved, the principles on which this was done, and the inter provincial disputes it gave rise to and how they were overcome.

In the aforesaid period the section lists as many as 11 major irrigation projects in the Indus Basin covering the Punjab, NWFP, Sind, Bahawalpur, and Bikaner. All of them used state of the art technology and some were hugely ambitious and complex like the Triple Canal Project in the beginning of the 20th century which entailed transfer of the waters of the Jhelum and the Chenab to the Ravi, or the Sutlej Valley Project comprising 4 barrages and 11 canals which expanded the area under cultivation to a total of 7.581 million acres of which 4.791 was in Punjab, 2.14 in Bahawalpur and 0.650 in Bikaner.

The advanced hydraulic engineering in the Indus Basin and in particular the Punjab converted it into one of the richest agriculture regions in Asia which not only met the cotton panic of Britain but also became the granary of India. While the Punjab was largely shielded from famine, India was not. This was mainly due to the commercialization of Indian agriculture and the diversion of Indian produce from local consumption to export to Britain.

While earlier west Punjab had little settlement due to the absence of rain. This changed with irrigation projects developed west of the Beas-Sutlej and east of the Jhelum. As many as nine canal colonies came up in these areas and a large recipient of these lands were military personnel.

Recognising the vital importance of water, its control for irrigation, navigation, and drainage was vested with the State. Legislation was also enacted that if a person died without any heir, his property would be vested with the State, and which was empowered to sell it to any developer public or private.

Inter provincial disputes inevitably became the order of the day with the increasing irrigation projects in the Indus Basin. Thus, the triple canal project was objected to by Bhawalpur and even by landowners in southern Punjab and the Sutlej Valley Project was objected to by Sind. Similarly, the Sukkur barrage in Sind was not taken up for years due to uncertainty about the availability of sufficient waters in the Indus. Interestingly, the Bhakra Dam was also given low priority even though in 1930 there was a finding that it would not have any adverse impact on downstream flows in Sind. To deal with inter se provincial claims and counterclaims on water utilization, several recommendations were made over the decades of which the following were some of the key points:

1. No province could be given an entirely free hand in respect of a common source of water and disputes should be resolved by the governor general; (1935 Act)
2. The most satisfactory settlement of differences was to be on common technical grounds as if the concerned parties constituted a single community undivided by political or administrative frontiers; (Indus Commission {IC} 1942)
3. In the absence of agreement, the rights of each of the parties must be based

on “equitable apportionment” with each unit getting a fair share of the water of the common river;(IC 1942)

4. Sir Claude Hill representing the Government of India in respect of the Sutlej Valley Project stated in 1918 that “ these waters should be distributed in the best interests of the public at large, irrespective of Provincial or State boundaries, subject always to the provision that established rights are fully safeguarded or compensated for, and that full and prior recognition is given to the claims of riparian owners and that their rights in existing supplies or in any supplies which may hereafter be made available in the Sutlej river below the junction of the Beas and Upper Sutlej are fully investigated and are limited only by the economic factor.”

The section concludes with an excellent expose on the very high quality of Indian engineers, many of whom like M Visvesraya, AN Khosla and Kanwar Sain were of world-class and made India proud. It could have been improved with the following additions:

1. A map showing the major irrigation projects undertaken;
2. A statement indicating the increase in length of canals constructed and area of land irrigated between 1857 and 1947;
3. An expose on the attention paid by the British to modernizing Indian agriculture, how it stacked up to productivity elsewhere in the world and how irrigation induced salinity was addressed;
4. An overview of revenue collection and the impact of irrigation upon it.

Impact of Partition

Section IV titled “Partition of Land and Rivers” dwells essentially on the Radcliffe Award and on India-Pakistan differences arising from the latter’s refusal to recognize the former’s rights as an upper riparian. It is unfortunate that the holocaust of 1947, in which around 2 million died and the greatest mass migration of around 15 million occurred, has not been addressed. This was the most important development of the time and was eminently preventable. In fact, my father, C.N. Chandra, who was intimately

involved with handling the refugee crisis in India had warned our political leadership at the highest level that this is precisely what would happen if the minorities in what was to become Pakistan were not moved out prior to independence. Regrettably, his warnings fell on deaf ears.

The author is rightly critical of the boundary demarcated by Radcliffe citing *inter alia* the inclusion of the Chittagong Hill Tracts and Khulna into Pakistan though the former had a preponderant Buddhist population and the latter a majority Hindu population. Similarly, the Muslim majority district of Murshidabad was allocated to India. However, the suggestion in the Section that the allocation of the Muslim majority district of Gurdaspur to India by Radcliffe was under pressure from Mountbatten, Nehru, and VP Menon to ensure road access to Kashmir is not credible as India was quite prepared to live with Kashmir's accession to Pakistan if the Maharaja so decided. This had been conveyed to the Maharaja by Mountbatten and has been cited in VP Menon's celebrated "Integration of the Indian States." I may additionally point out that the sources for the assessment in this regard in this section, notably Stanley Wolpert and Zafrullah Khan, were notoriously biased against India and cannot be taken as credible.

The author is, of course, correct in suggesting that pressure was brought upon Radcliffe by Mountbatten to award Ferozepur to India. This was largely due to the alacrity shown in this matter by Kanwar Sain who at the time was the Chief Engineer in Bikaner State and who had learnt from Sarup Singh the Chief Engineer in Punjab that Ferozepur was likely to be allocated to Pakistan. He had deduced this as he had been asked by the Punjab Governor to relocate outside Ferozepur district. This news was naturally worrisome to Kanwar Sain as the Ferozepur headworks controlled the water supply to the Ganga Canal which watered Bikaner. While Kanwar Sain took up the matter at his level with the Radcliffe Commission he also escalated it to the level of the Maharaja who in turn took it up with Nehru and with Mountbatten with whom he was personally well acquainted. The Maharaja made it clear that should the Ferozepur headworks be allocated to Pakistan he would have no option but to accede to Pakistan. As a result of these collective demarches one can safely conclude that Radcliffe was prevailed upon by Mountbatten to change his Award in respect of Ferozepur in favour of India.

Partition inevitably resulted in Indian control of some of the waters of the Indus Basin that flowed into Pakistan. However, this was relatively marginal. As cited by

Gulati in his magnum opus “The Indus Waters Treaty” as many as 133 of the large canal systems were entirely in Pakistan as against a mere 12 in India. These supplied water to 95% of the total irrigated area. Of the 19 headworks, only four came to India of which Ropar and Hussainiwala were on the Sutlej for exclusive regulation of waters earmarked for East Punjab. The remaining two were Ferozepur and Madhopur. The former regulated supplies to Bikaner, parts of Ferozepur district and the Dipalpur canal in Pakistan. Only one canal system, notably the UBDC, was severed by the boundary at several places and completely dependent on the Madhopur headworks in India. Thus, in all fairness the Radcliffe Award cannot be overly faulted for the way in which the canal infrastructure was split between the two countries. Moreover, one should note that Radcliffe was required to carry out an enormously complex and difficult task in a matter of five weeks which ought to have been spread over a much longer time frame. In this context one may note that it took two years to separate Sind from Bombay (1935) and Orissa from Bengal (1936) and three years to separate Burma from India (1937). Both Jinnah and Nehru share a much larger amount of the blame in failing to recognize the manifold problems that would arise with the division of the country. As so well brought out in this section when Radcliffe in his innocence suggested joint management of the Indus Basin, Jinnah in his arrogance asserted that “He would rather have Pakistan’s deserts than fertile fields watered by the courtesy of Hindus” and Nehru in sheer bravado asserted “What India did with India’s rivers was India’s affairs.” It is ironic that both did not live up to what they said. Jinnah’s Pakistan fought India tooth and nail for every drop of these very waters and Nehru made all manner of concessions.

The Section deals at length with the India-Pakistan waters dispute which came into the open within a year of Partition. At the outset, all appeared well as the Chief Engineers of West and East Punjab came to a Standstill Agreement in December 1947 that the status quo ante in regard to supply of water would be maintained both in the UBDC canal system and at Ferozepur headworks till 31 March 1948 prior to which a fresh agreement would have to be concluded for further supply arrangements. This agreement was endorsed by the Punjab Partition Committee, which had referred the matter to them on account of differences on the issue. Despite reminders, Pakistan did not revert in the matter, and accordingly the East Punjab government on 1 April 1948 discontinued use of its installations for the benefit of the CBDC, because of which some areas in the Lahore sector went dry. Clearly the East Punjab Government was well

within its rights to do so but it came in for much criticism from Nehru and even Gulhati felt that this was “provocative”. It may on the contrary be mentioned that it was necessary to do so to establish the rights of East Punjab as the upper riparian and more so as West Punjab failed to revert in the matter.

Pakistan in retaliation, contrary to the agreement reached in March 1948, suspended issuance of permits for removal of valuables by Indians from Pakistan and ordered its Banks not to allow any transfer of securities from West Punjab to India.

In any case, by mid-April the Chief Engineers of the East and West Punjab governments arrived at an understanding for restoration till 30th September 1948 of status quo ante in supplies to CBDC, supply till 15/10/48 of water from Ferozepur headworks to the non-perennial Dipalpur canal and other West Punjab and Bahawalpur canals taking off at Suleimanki and Islam, and payment by Pakistan to India of seigniorage (royalty charges), proportionate maintenance costs, and interest on proportionate capital costs.

An India-Pakistan inter dominion meeting of May 3-4, 1948, ratified the aforesaid agreement arrived at by the chief engineers. Pakistan raised no objection other than payment of seigniorage and to capital cost of UBDC for calculation of interest charges. There was no objection to the leaving out of consideration waters of upper Sutlej nor to omission of supplies for Bahawalpur State Distributary from the Eastern Canal in East Punjab. While a final decision on payments was postponed it was agreed that West Punjab government would deposit such ad hoc sums as specified by the Indian PM in the RBI and payments would be made immediately to East Punjab government of amounts on which there was no dispute, notably maintenance charges, with the balance being kept in escrow.

The Agreement clearly stipulated that the East Punjab government would not suddenly withhold waters and would give Pakistan time to “tap alternative sources” and that West Punjab Government recognized East Punjab Government’s “natural anxiety.....to develop areas where water is scarce and which are underdeveloped in relation to parts of West Punjab.” The agreement had no terminal date. The section goes on to describe the tortuous machinations of Pakistan whereby it not only got India to supply waters to Bahawalpur, reneged upon the payments it had promised to make for obtaining waters from India, and ultimately walked out of the aforesaid

eminently reasonable Agreement. In the process it made a pitch for third party intervention as in the case of Kashmir.

Indus Water Treaty

Section V titled “Making of the Indus Waters Treaty” deals not only with the Treaty but *en passant* also touches upon the Kashmir issue in the UN. It rightly underlines Mountbatten’s role in dissuading Nehru against the military option and in persuading him to take the issue to the UN. It is also right in assessing that the US at that time had a definite tilt towards Pakistan. It is, however, incorrect to suggest that the UNCIP resolution of August 1948 (not UNSC resolution of April 1948 as posited in the Section) was not “unfavourable to India”. While it is true that the UNCIP resolution made a plebiscite conditional on cessation of hostilities and the withdrawal of Pakistani tribesmen and nationals from Kashmir, it sidestepped the issue on which India had taken the matter to the UN, namely that of Pakistani aggression against India. Thus, India’s complaint remained unaddressed, and the issue of Kashmir was allowed by the UN to become an issue for third party meddling.

The involvement of the World Bank in the Indus Water Treaty negotiations was the result of the interplay of several forces, notably the conviction of Lilienthal, former chairman of the AEC and the TVA that the differences relating to the Indus Waters were amenable to a technical solution, the desire of the World Bank Chairman, Eugene Black to find a new role for the Bank as a mediator, and Nehru’s reluctance to use water as a weapon and readiness to accept third party involvement. Pakistan, of course, was only too ready for any third party involvement.

In March 1952 a working party comprising Indian, Pakistani and World Bank engineers were set up for the cooperative development of the Indus Basin waters and for their most effective use for the economic development of the Basin as a whole. This as usual did not come without a price for India as it was debarred from diminishing supplies to Pakistan for existing uses.

With the integrated basin approach taking a hit under the impact of Indo-Pak tensions the World Bank asked the Indian and Pakistani engineers to separately submit their own water use and allocation plans. While India indicated that out of an availability

of 119 MAF, 29 should be allocated to it and 90 to Pakistan, the latter contended that out of an availability of 118 MAF, 15.5 should be given to India and 102.5 should be reserved for Pakistan. While some difference between the allocations made by the two sides was inevitable, the section is spot on in finding India's generosity as intriguing. The Indian projection is no doubt responsible in no small measure to our finally being allocated only 20% of the waters of the Indus Basin as against an entitlement of at least 40%. India should certainly have made a pitch for a much higher allocation as in 1947. Pakistan already had an acreage of 21 million irrigated by the Indus canals while India had a mere 5 million. Similarly, while canals in Pakistan were using 64.4 MAF those in India were using only 8.3 MAF. The reason for our pathetic negotiating strategy was perhaps to get a deal somehow anyhow so that there was no impediment to the construction of the Bhakra Nangal project.

Within a couple of years of commencement of negotiations, the World Bank, saw the writing on the wall and buried the idea of an integrated basin approach. In February 1954, it proposed a settlement based on a division of the Indus Basin rivers with the eastern three for India's use and those in the West for Pakistan. After 6 years of negotiations, the Indus Waters Treaty was concluded on the basis of the foregoing, which inter alia required the development of infrastructure in Pakistan to facilitate the transfer of waters from the western rivers to canal systems serviced by the eastern rivers whose waters would not be available for Pakistan's use. The development cost of this was \$870 million for which the World Bank was the guarantor. As much as \$174 million was contributed by India and around \$177 million by the US. The bulk of the contributions were in grants and, as the author puts it, Pakistan laughed all the way to the bank. The Treaty came in for massive criticism in India at the time it was concluded both in Parliament and in the media. Several mainstream papers castigated the government for making concessions after concessions and even yielding to Pakistan's wishes. The deal was seen as unfair to India and overly generous to Pakistan. Nehru's defence was unconvincing and feeble and he went to the extent of saying "we purchased a settlement, if you like; we purchased peace and it is good for both countries" He was proven completely wrong with the war in Kutch and subsequently on our entire western front in 1965.

A Critique

The author in the postscript strongly defends the Treaty and, in this context, makes

the following points:

1. The Treaty survived the numerous the India-Pakistan armed conflicts and the hydraulic installations under it were never attacked;
2. The Treaty alone made possible the construction of many hydraulic structures in India like Bhakra, Rajasthan Canal, etc.;
3. Pakistan has never advocated abrogation or revision of the Treaty;
4. The Treaty never had any overriding political objective and was a classical lesson in international mediation;
5. The framers negotiated the differences between them by balancing the water rights of Pakistan without compromising on India's needs, through concessions and unprecedented statesmanship;
6. India has woefully neglected the utilisation of the waters of the Western rivers as per its entitlement under the Treaty.

I am not in agreement with the aforesaid points barring of course India's negligence in the utilization of the waters of the western rivers as per its Treaty entitlement. My brief response in seriatim is as follows:

1. The fact that the Treaty was not abrogated or suspended is entirely due to Indian pusillanimity. Any other country under constant terror attack by Pakistan since its inception would have done so;
2. As an upper riparian it was entirely up to India to have made whatever structures it so desired on the rivers that flowed through it. No upper riparian has made as many concessions to a lower riparian as has India to Pakistan. Consider what are China's actions vis a vis its lower riparian states or those of Turkey;
3. Pakistan has, in fact, on occasion expressed much unhappiness about the treaty and has often denounced it;
4. It is erroneous to contend that the treaty had no overriding political objective. Gulhati recounts that in his last day in office on 28th February 1961 when he

called on Nehru the latter in a sad tone commented that he had hoped that the Treaty “would open the way to settlement on other problems, but we are where we are.” Gulhati concludes that this told heavily on Nehru and can be regarded as marking the beginning of his end;

5. To contend that India’s needs were not compromised and that the Treaty was achieved through unprecedented statesmanship is hard to accept. In this context one must note that we got only 20% of the waters as opposed to our right to 40% thereof, that all the concessions were made by India and none by Pakistan, and that New Delhi paid a huge amount to Pakistan for its hydraulic infrastructure, even while Pakistan has all along been trying to undermine India. Indeed, in the financial clauses of the Treaty there was even a provision debarring India from setting off Pakistan’s debts to it, thereby making it difficult to recover the latter’s non-payment of dues on account of seigniorage, and other charges for waters supplied to it. That the Treaty was badly drafted is also apparent from the fact that it lacked a termination clause which is standard practice.

While it is common knowledge that India-Pakistan relations have, ab initio, been adversarial since 1947, and that the Indus Waters Treaty has not had any positive impact thereon, it is not so well known that Pakistan has used it to stall even the limited utilisation of the western rivers permitted to India under it. Pakistan has done so by using mechanisms built into the Treaty to raise all manner of objections to Indian developmental projects on these rivers and by dragging, since 2005, the differences between the two countries to a neutral expert and a court of arbitration at considerable expense to both countries. Thus, projects like the Tulbal Navigation mooted in 1984 have yet to see the light of day, and Salal took 20 years for commissioning after design approval. Additionally, the World Bank’s role has been disconcerting. It agreed at Pakistan’s request to the referral of the Kishenganga project to a court of arbitration on design related issues even though such matters are more appropriately addressed by a neutral expert. To make confusion worse confounded the project is under reference to both a court of arbitration and a neutral expert which is a recipe for disaster.

In these circumstances, it is imperative for India to revisit the Indus Waters Treaty since apart from being heavily weighted against it and has neither ended India-

Pakistan water-related differences nor eased tensions between the two countries. Above all, such a move is essential to impose costs on Pakistan for its export of terror to India. There is no logic for India to continue to honour such an unequal water treaty at a time when Pakistan blatantly violates the Shimla Agreement and its solemn commitment not to allow the export of terror to India either from its territory or from territory under its control. Regrettably, the Treaty has no time limit, and modification or termination is only possible through mutual agreement. Since Pakistan will not agree to anything proposed by India, this route cannot be taken for abandoning the Treaty. Accordingly, the most viable option for abandoning the Treaty is to invoke Article 62 of the Vienna Convention on the Law of Treaties where this is feasible on the grounds that there has been a fundamental change in the circumstances leading to the conclusion of that Treaty. It is understood that the International Court of Justice has **upheld the principle that a treaty may be dissolved by reason of a fundamental change of circumstances**. The change in circumstances is the fact of Pakistan's use of terrorism against India in default mode as an instrument of foreign policy. It could be plausibly argued that this has led to a virtual state of war between the two countries, which makes it impossible for India to abide by the Indus Waters Treaty any longer.